

Message Text

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INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
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C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 2038

E.O. 11652: XGDS-1
TAGS: PGOV AKB
SUBJECT: ALLIED REPLY TO SOVIET S-BAHN PROTEST

REF: USBER 1699

SUMMARY: FOLLOWING TELEGRAM REPORTS AN EXCHANGE OF
STATEMENTS ABOUT RECENT ALLIED INSTRUCTIONS PERMITTING
THE WEST BERLIN POLICE FREER ACCESS TO THE GDR-OPERATED
S-BAHN AND REICHSBAHN FACILITIES IN WSB. PERTINENT TEXTS
ARE ATTACHED. END SUMMARY.

1. ON AUGUST 25, U.S. MISSION OFFICER (SEMLER) DELIVERED
REPLY TO SOVIET PROTEST OF JULY 13 (TEXT BELOW) CONCERNING
ALLIED INSTRUCTIONS CONTAINED IN PUSA/L (78)3 PERMITTING
WEST BERLIN POLICE FREER ACCESS TO GDR-OPERATED S-BAHN AND
REICHSBAHN FACILITIES IN WSB.

2. SOVIET MINISTER KHOTULEV SAID HIS AUTHORITIES WOULD STUDY
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ALLIED REPLY. HE REMARKED QUOTE YOU KNOW OUR LEGAL
POSITION, WE KNO YOURS UNQUOTE. HE THEN INSISTED THAT
WEST BERLIN POLICE HAVE NO RIGHT TO INTERFERE WITH THE
S-BAHN AND REICHSBAN WHICH WERE GIVEN TO THE GDR BY THE
SOVIET MILITARY ADMINISTRATION.

3. IN RESPONSE TO A POINT MADE BY KHOTULEV TO BRITISH

POLAD GLADSTONE ON JULY 20, MISSOFF SAID THAT REICHSBAHN AND S-BAHN COMPLAINTS HAD LED TO A NUMBER OF SUCCESSFUL PROSECUTIONS IN WSB COURTS (33 DURING 1977). THE POLICE AND WSB OFFICIALS COULD WORK MORE EFFECTIVELY IF S-BAHN AND REICHSBAHN EMPLOYEES WOULD REPORT IMMEDIATELY CRIMINAL ACTIVITIES ON THESE FACILITIES. KHOTULEV AGREED WITH THIS POINT (MADE TO US FREQUENTLY BY THE SENAT) AND SAID HE WOULD TALK TO THE GDR AUTHORITIES. HE WAS IN FAVOR OF SUCH COOPERATION. MISSOFF SAID ALLIES WERE NOT INTERESTED IN ANY "OFFICIAL" ARRANGEMENT, JUST DAY-TO-DAY COOPERATION. THE WEST BERLIN POLICE SIMPLY CANNOT TRACE SOME EVILDOER IF THEY ARE PROVIDED WITH THE FACTS ABOUT THE COMPLAINT ONLY EIGHT DAYS AFTER THE OFFENSE HAS BEEN COMMITTED.

4. TEXT OF SOVIET PROTEST OF JULY 13 FOLLOWS:

QUOTE

THE WEST BERLIN PRESS HAS REPORTED THAT THE MILITARY ADMINISTRATIONS OF THE THREE POWERS IN WEST BERLIN HAVE PUBLISHED AN ORDINANCE PERMITTING THE WEST BERLIN POLICE IN FUTURE TO CARRY OUT CONTROLS ON THE TERRITORY AND IN THE TRAINS OF THE STATE RAIWAYS OF THE GDR (QUOTE REICHSBAHN UNQUOTE) AND OF CITY ELECTRIC TRAINS (QUOTE S-BAHN UNQUOTE) IN WEST BERLIN.

IT IS QUITE CLEAR THAT THEIR ORDINANCE IS NOTHING CONFIDENTIAL

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OTHER THAN AN ATTEMPT SERIOUSLY TO ENTERFERE BY THE WEST BERLIN SIDE IN THE RIGHTS AND COMPETENCES OF THE GERMAN DEMOCRATIC REPUBLIC WITH REGARD TO COMMUNICATIONS IN WEST BERLIN BELONGING TO IT IN ORDER TO CHANGE THE SITUATION LONG EXISTING IN THIS FIELD.

THE EMBASSY OF THE USSR IN THE GDR WISHES TO MAKE A STRONG PORTEST TO THE MILITARY ADMINISTRATIONS OF THE THREE POWERS AGAINST THE ARBITRARY ACTIONS, WHICH ARE, APART FROM TOHER CONSIDERATIONS, A DIRECT VILOATION BY THE THREE POWERS OF THEIR OBLIGATIONS IN THE QUADRIPARTITE AGREEMENT OF 3 SEPTEMBER 1971, WITH REGARD TO THEIR RESPECTING THE EXISTING SITUATION AND NOT ALTERING IT UNILATERALLY. THE SOVIET EMBASSY NATURALLY CANNOT RECOGNISE THE ORDINANCE OF THE MILITARY ADMINSTRATION AS LEGAL AND INSIST ON ITS IMMEDIATE ABROGATION. THE EMBASSY IN THE MOST SERIOUS MANNER POSSIBLE WARNS THE WESTERN SIDE ABOUT THE IMPLEMENTATION OF THIS DECISION AND STATES THAT ALL RESPONSIBILITY FOR UNLAWFUL ACTIONS ARISING OUT OF IT, IF SUCH ACTIONS WILL STILL FOLLOW, WILL BE THE RESPONSIBILITY OF THE MILITARY ADMINISTRATIONS OF THE THREE WESTERN POWERS. UNQUOTE.

5. TEXT OF ALLIED REPLY HANDED OVER ON AUGUST 25 FOLLOWS:

QUOTE

I HAVE BEEN INSTRUCTED TO REPLY TO YOUR STATEMENT OF 13 JULY IN WHICH YOU REFERRED TO THE RECENT PUBLICATION OF AND ORDINANCE PERMITTING THE POLICE IN THE WESTERN SECTORS OF BERLIN TO CARRY OUT CONTROLS OF THE REICHSBAHN AND S-BAHN.

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NO SUCH ORDINANCE HAS BEEN ISSUED. HOWEVER, UNDER THE ORDINANCE CONCERNING CONSTRUCTION AND OPERATION OF RAILWAYS OF 17 JULY 1928 AND ORDERS OF THE ALLIED KOMMANDATURA, IN PARTICULAR BK/O(62)6, THE POLICE IN THE WESTERN SECTORS HAVE LONG ENJOYED POWERS TO CARRY OUT NORMAL POLICE FUNCTIONS ON THE REICHSBAHN AND S-BAHN IN THESE SECTORS. ALTHOUGH IN RECENT YEARS THE USE OF THESE POWERS HAS ONLY RARELY PROVED TO BE NECESSARY, THE RECENT MARKED INCREASE IN USE OF THE S-BAHN BY CRIMINALS (IN PARTICULAR FOR THE PURPOSE OF SMUGGLING DRUGS INTO THE WESTERN SECTORS) MADE IT NECESSARY FOR THE ALLIED KOMMANDATURA TO REAFFIRM THESE POWERS. AT THE SAME TIME THE ATTENTION OF THE POLICE AUTHORITIES HAS BEEN DRAWN TO THE RESTRICTIONS WHICH CONTINUE TO BE IMPOSED ON THEM BY BK/O(62)6.

SUCH ACTION BY THE ALLIED KOMMANDATURA CANNOT IN ANY WAY CONSTITUTE A CHANGE IN THE SITUATION EXISTING AT THE SIGNING OF THE QUADRIPARTITE AGREEMENT OF 3 SEPTEMBER 1971.

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THE POSITION OF THE THREE WESTERN GOVERNMENTS CONCERNING THE LAND OVER WHICH THE REICHSBAHN AND S-BAHN OPERATE IN THE WESTERN SECTORS OF BERLIN IS WELL KNOWN. ALTHOUGH THE ALLIED AUTHORITIES HAVE ALLOWED THE REICHSBAHNDIREKTION IN THE EASTERN SECTOR TO CONTINUE TO OPERATE THE REICHSBAHN AND S-BAHN IN THE WESTERN SECTORS, THIS IN NO WAY ALTERS THE FACT THAT ALL PROPERTY USED BY THE REICHSBAHN AND S-BAHN IN EACH OF THE WESTERN SECTORS REMAINS SUBJECT TO THE JURISDICTION AND CONTROL OF EACH SECTOR COMMANDANT BY VIRTUE OF HIS POWERS AS THE COMMANDER OF AN OCCUPATION FORCE AND PURSUANT TO SHAEF LAW NO. 52. ANY CLAIM BY THE GDR TO SOVEREIGNTY OR JURISDICTION OVER SUCH PROPERTY IS WITHOUT ANY LEGAL FOUNDATION. UNQUOTE.

6. TEXT OF PUSA/L(78)3 FOLLOWS:

QUOTE

JUNE 21, 1978

TO: POLICE PRESIDENT

SUBJECT: POLICE CONTROLS AT THE RAILWAY-STATIONS ON
THE S-BAHN IN THE WESTERN SECTORS OF BERLIN

DEAR HERR HUEBNER:

1. AWARE OF THE PROBLEMS IMPOSED TO THE POLICE OF THE WESTERN SECTORS OF BERLIN BY THE POSSIBILITIES OFFERED TO THE DELINQUENTS BY UTILIZATION OF THE S-BAHN WITHOUT GREAT RISKS, THE PUBLIC SAFETY COMMITTEE HAS DECIDED, BY APPLICATION OF PARAGRAPHS 1 AND 2 OF BK/O(62)6, TO GIVE TO THE POLICE MENTIONED ABOVE THE PERMANENT AUTHORIZATION
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TO ACT IN THE DOMAIN UTILIZED BY AND IN THE COMPARTMENTS OF THE S-BAHN IN THE WESTERN SECTORS OF BERLIN.

2. HOWEVER, THIS AUTHORIZATION IS SUBMITTED UNDER THE FOLLOWING CONDITIONS:

A. THAT THE ACTIONS OR CONTROLS HAVE NOT A SYSTEMATIC CHARACTER AND ARE DECIDED ONLY IN FUNCTION OF THE NECESSITIES OF THE SITUATION.

B. THAT THE ACTIONS OR CONTROLS ARE NOT AT THE IMMEDIATE PROXIMITY OF THE BORDER OF THE SOVIET SECTOR - OR ONLY VERY EXCEPTIONALLY AND THAT THE INTERESTED PUBLIC SAFETY ADVISER IS INFORMED PREVIOUSLY.

C. THAT THE PUBLIC SAFETY ADVISERS ARE STRICTLY INFORMED:

- PRIORITY - OF THE ENVISAGED EXTENT OF THE OPEARTION

- POSTERIORITY - OF THE RESULTS OF ALL ACTIONS

- IMMEDIATELY - OF ALL INCIDENTS OR PROBLEMS WHICH HAPPEN OR COULD HAPPEN

D. THAT THE RESTRICTIONS STATED IN PARAGRAPH 2 OF BK/O(62)6 ARE EQUALLY RESPECTED.

3. A TOTAL REPORT, CONCERNING THE RESULTS OF THE OPERATIONS THE POLICE HAS BEEN EXECUTING IN THIS DOMAIN, HAS TO BE ADDRESSED AT THE END OF EACH QUARTER TO THE PUBLIC SAFETY COMMITTEE.

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4. THE PARAGRAPH 1(B) OF PUSA/L(74)3 IS CANCELLED.

SINCERELY YOURS,

A. VAGNEUX

CHAIRMAN

PUBLIC SAFETY COMMITTEE

UNQUOTE.

7. COMMENT. WE TREATED THIS QUESTION FROM THE START AS A LOCAL BERLIN MATTER. HOWEVER, FCO UNDER-SECRETARY HIBBERT HAS HIMSELF BECOME INVOLVED (TO THE DISMAY OF BRITISH OFFICIALS HERE) SO THAT THIS LASTEST OF MANY SUCH EXCHANGES ON S-BAHN AND REICHSBAHN QUESTIONS MAY BE RAISED BY THE BRITISH IN THE BONN GROUP. NELSON

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